

2014 WL 4210406 (Md.Cir.Ct.) (Trial Pleading)
Circuit Court of Maryland.
Baltimore County

Eleanor Marie WILLIAMS, Plaintiff,
v.
Montia FARMER,
and
FAMILY TOUCH ASSISTED LIVING, LLC, Defendants.

No. 03-C-14-007739.
July 21, 2014.

Complaint

[Christian A. Lodowski](#), Law Offices of Christian A. Lodowski, P.A., 100 West Road, Suite 300, Towson, Maryland 21204, (410) 583-6100, for plaintiffs.

The Plaintiff, Eleanor M. Williams, by and through her Niece and Power of Attorney, Sandra Smith, and through her attorneys, Christian A. Lodowski, P.A, hereby sues the Defendants, Family Touch Assisted Living, LLC and Montia Farmer and states:

VENUE

1. This claim was brought before the Health Care Dispute Resolution Office of Maryland, HCA No. 2014-268, pursuant to [Md. Code Ann., Cts. & Jud. Proc., 3-2A-01, et. seq.](#) Plaintiffs Statement of Claim and Certificate of Qualified Expert are attached hereto as Exhibit 1. Plaintiffs filed an Election to Waive Arbitration and an Order of Transfer to this Court was subsequently granted, and is attached hereto as Exhibit 2.
2. The amount in controversy exceeds Thirty Thousand Dollars (\$30,000.00), exclusive of interests and costs.
3. The proper venue for this action is Baltimore County, Maryland.

PARTIES

4. The Plaintiff, Eleanor M. Williams ("Eleanor") is an adult citizen of the State of Maryland, and whose Niece and Power of Attorney, Sandra Smith, and resides at 3720 Lamoine Road, Randallstown, Maryland 21133-3730.
5. The Defendant, Family Touch Assisted Living, LLC ("Family Touch"), was and is, an entity licensed and duly organized and existing under the laws of Maryland, which provides health care services for members of the public, including, but not limited to, assisted living services at 7165 Fairbrook Road, Windsor Mill, Maryland 21244.
6. The Defendant, Montia Farmer, is an adult citizen of the State of Maryland residing at 930 Dantrey Court, Brooklyn, Maryland 21225.

7. At all times material hereto, the medical care provided to Eleanor Williams by Family Touch was provided by and through their actual and/or apparent agents, nurses, residents, independent contractors, servants and/or employees, including but not limited to, Montia Farmer, and other as yet unidentified other health care providers.

8. At all times mentioned and relevant herein, all of the individuals at Family Touch who participated in the care provided to Eleanor Williams were acting on behalf of and within the scope of their employment and/or agency.

9. At all times relevant to the facts alleged herein, Defendant, Family Touch, themselves and through their actual and/or apparent agents, nurses, residents, independent contractors, servants and/or employees, including but not limited to Montia Farmer, represented to Eleanor Williams and the general public that they possessed the degree of knowledge, ability and skill possessed by reasonably competent medical providers practicing under similar circumstances as those involved in the care of Eleanor Williams.

FACTS COMMON TO ALL COUNTS

10. The Plaintiff incorporates in this Count those facts set forth in Paragraphs 1 through 9, hereinabove, including subparagraphs, by reference thereto, as if fully set forth herein.

11. At all relevant times complained of, the Defendant, Family Touch, was the employer, master and principal of the nurses, nursing aides, nursing assistants and custodial staff responsible for the provision of nursing and custodial related services to those patients admitted to Family Touch including, but not limited to, the Plaintiff, Eleanor Williams.

12. All at times complained of, the Defendant, Family Touch, was acting through its real, apparent, and/or ostensible agents, servants and/or employees, who were acting within the scope of their agency, apparent agency, contract and/or employment, in the services that they provided to the Plaintiff, Eleanor Williams, while she was a patient and resident at Family Touch.

13. All acts complained of concerning Family Touch, including all acts of the agents and employees at Family Touch concerning the Plaintiff, Eleanor Williams, were authorized, participated in and/or ratified by the Defendant, Family Touch, or its administrators, managers, officers or directors.

14. At all times complained of the Defendant, Montia Farmer, was acting individually and as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, within the scope of her agency, apparent agency, contract and/or employment.

15. At all relevant times complained of, the Defendant, Family Touch, held out and represented to the public, including to the Plaintiff, Eleanor Williams, and to her Niece and Power of Attorney, Sandra Smith, that Family Touch was a facility with particular expertise and experience in providing care for patients suffering from disabilities associated with Alzheimer's Disease, dementia and/or memory loss.

16. At all times complained of, the Defendant, Family Touch, held out and represented to the public, and to the Plaintiff, Eleanor Williams, and to her Niece and Power of Attorney, Sandra Smith, that the staff at Family Touch were well-educated and "specially trained" with respect to Alzheimer's Disease, including the disease process and its management.

17. On or about January 4, 2013, the Plaintiff, Eleanor Williams, was admitted to Family Touch with Admission Diagnosis including Alzheimer's Disease and dementia, at which time the Plaintiff came under the assisted living and custodial care and oversight of the real, apparent and/or ostensible agents, servants and/or employees of the Defendant, Family Touch, including but not limited to, the Defendant, Montia Farmer.

18. Upon the admission of the Plaintiff, Eleanor Williams, to Family Touch, the Defendant, Family Touch, represented that they would provide quality and adequate assisted living home care in a safe and secure environment.

19. At all relevant times complained of, the Plaintiff, Eleanor Williams, was totally dependent upon the assisted living and custodial care and oversight of, and the services provided by the Defendant, and Family Touch, individually, and through their duly authorized real, apparent and/or ostensible agents, servants and/or employees, including, but not limited to, the Defendant, Montia Farmer, for all of the Plaintiff's activities of daily living including daily living including dressing, personal hygiene and feeding.

20. At all relevant times complained of, the Defendant, Family Touch, through their real, apparent, and/or ostensible agents, servants and/or employees, including, but not limited to, the Defendant, Montia Farmer, knew or, through the exercise of reasonable care, should have known that the Plaintiff, Eleanor Williams, was completely dependent upon the Defendants to ensure her safety, protection, health and well-being.

21. At all relevant times complained of, the Defendant, Family Touch, individually and through their duly authorized agents, servants and/or employees, held themselves out and represented to the Plaintiff, Eleanor Williams, and to her Niece and Power of Attorney, Sandra Smith, that their real, apparent and/or ostensible agents, servants and/or employees, including, but not limited to, the Defendant, Montia Farmer, were "specially trained" to provide the Plaintiff, Eleanor Williams, with a safe living environment and otherwise to ensure the Plaintiff's safety, protection, health and well-being.

22. At all relevant times complained of, the Defendant, Family Touch, individually, and through their duly authorized agents, servants and/or employees, including, but not limited to, the Defendant, Montia Farmer, represented to the Plaintiff, Eleanor Williams, and to her Niece and Power of Attorney, Sandra Smith, that their real, apparent, and/or ostensible agents, servants and/or employees were sufficiently staffed, properly supervised, properly educated, properly trained and properly equipped to safely provide the total care and custodial needs of the Plaintiff, Eleanor Williams, and to ensure her safety, health and physical and emotional well-being.

23. On or about January 4, 2013, Eleanor Williams, then 96 years of age, became a resident of Family Touch Assisted Living.

24. Ms. Williams presented with a medical history including atrial arrhythmia, kidney disease, Alzheimer's and dementia.

25. On or about August 8, 2013 the Defendant, Montia Farmer, entered the room of the Plaintiff, Eleanor Williams, and physically assaulted the Plaintiff, Eleanor Williams, while attempting to provide assisted living services to Ms. Williams, without first obtaining the guidance, oversight and assistance of any other staff at Family Touch.

26. On or about August 9, 2013, Sandra Smith, the Plaintiffs niece and guardian, arrived at Family Touch and visualized Ms. Williams' injury to her right eye.

27. Ms. Smith immediately took Ms. Williams to her family physician, namely Kalu Uma, M.D.

28. Dr. Uma assessed and examined Ms. Williams and determined that she had new facial and bilateral upper arm bruises which were concerning for physical abuse,

29. Dr. Uma's plan at that time was to notify the police and advise Ms. Williams to not return to Family Touch until the police investigation was completed.

30. On or about August 9, 2013, a Baltimore County police officer was dispatched regarding the injury Ms. Williams sustained at the health care providers residence.

31. The Baltimore County Police Department investigated the physical assault of the Plaintiff, Eleanor Williams. In his/her incident report, Baltimore County Investigating Officer Schoneman noted:

Ms. Smith advised that she picked Eleanor up at the aforementioned location at approximately 15:30 hours for a doctor's appointment at 210 Business Center Drive. Ms. Smith stated that upon arrival she observed a large bruise on Eleanor's right eye. Ms. Smith stated that she was advised by staff that Eleanor had refused to remove her eyeglasses before bed and slept with them on, causing her eye to bruise. Ms. Smith advised that Dr. Kalu Uma examined Eleanor and determined that eyeglasses would not cause such an injury to Eleanor's eye.

This officer spoke with Dr. Uma who advised that the injury to Eleanor's right eye was caused by someone striking her in the face. Dr. Uma also stated that upon further examination, "finger" sized bruises were observed on both of Eleanor's inner biceps. This officer observed the same aforementioned bruising on Eleanor's body. This officer had crime lab unit # 2041 respond for photographs.

Incident Report, dated August 9, 2013 (emphasis added).

32. The officer's investigation further revealed that the manager at Family Touch was suspicious when she learned of Ms. Williams' bruises on the inner biceps and her own investigation determined that Montia Farmer, Ms. Williams' caregiver, was responsible for the aforementioned bruises. Specifically, Officer Schoneman report states:

This officer contacted Yolanda Thompson (manager at Family Touch Assisted Living), who advised that she had last seen Eleanor without the aforementioned bruising yesterday around 14:00 hours. Ms. Thompson stated that upon arriving this morning at approximately 09:00 hours she observed Eleanor's bruised eye. Ms. Thompson was advised of the same aforementioned story involving the eyeglasses. Ms. Thompson stated that she conducted an investigation and determined that the eyeglass story was truthful. Ms. Thompson advised that she became suspicious when she was called back today because of bruises that were observed on Eleanor's inner biceps. Ms. Thompson stated that she investigated the incident further and determined that Montia Farmer (caregiver) was responsible for the aforementioned bruises. Ms. Thompson advised that Ms. Farmer was terminated from the job based on the aforementioned findings.

33. The officer subsequently contacted Ms. Williams' social worker regarding this incident. The social worker visited Family Touch and reviewed their logs. The social worker advised that in her professional opinion, "abuse is present in this incident."

34. Eleanor Williams relied upon the Defendant, Family Touch, and their actual and/or apparent agents, nurses, residents, independent contractors, servants, and/or employees, jointly and severally, to exercise that degree of skill and care to prevent a patient from being physically struck and being physically restrained, as would other reasonable healthcare providers under the same or similar circumstances.

35. As a direct and proximate cause of the negligence of this health care provider, Plaintiff suffered, among other things, pain, suffering, bruising, and Plaintiff has in the past, is presently, and will in the future suffer among other things, unending pain, emotional anguish, fear and humiliation.

COUNT I

(Negligence - Family Touch Assisted Living, LLC)

36. The Plaintiff, Eleanor Williams, individually and through her Niece and Power of Attorney, Sandra Smith, repeats, re-alleges, adopts and incorporates by reference paragraphs 1 through 35 of the Complaint as though fully set forth herein.

37. At all times complained of, the Defendant, Family Touch, owned, operated, managed and controlled Family Touch and represented to the public, to the Plaintiff, Eleanor Williams, and to her Niece and Power of Attorney, Sandra Smith, possession of that degree of care, skill, knowledge, training, and expertise ordinarily possessed by a reasonably competent medical corporation providing medical, assisted living, and/or custodial care and professional services to **elderly** patients suffering from disabilities associated with Alzheimer's Disease, dementia and/or memory loss.

38. At all times complained of, the Defendant, Family Touch, was acting individually and as the principal, master and employer of the Defendant, Montia Farmer.

39. The Defendant, Family Touch, was and is responsible for the negligent and/or intentional acts, conduct and/or omissions of its real, apparent and/or ostensible agents, servants and/or employees, including, but not necessarily limited to, the Defendant, Montia Farmer, acting within the scope of her agency and employment, under the doctrines or *respondeat superior*, agency and/or vicarious liability.

40. At all times complained of, the Defendant, Family Touch, through its real, apparent and/or ostensible agents, servants and/or employees, owed to the Plaintiff, Eleanor Williams, the duty to exercise that degree of care, skill, judgment and expertise ordinarily expected of a reasonably competent professional corporation providing professional care and services to **elderly** patients suffering from disabilities associated with Alzheimer's Disease, dementia and/or memory loss in facilities in the state of Maryland such as Family Touch. That duty included the use of reasonable and prudent care and judgment by the agents, servants, and/or employees of the Defendant while having any professional or personal interactions with such patients and/or while providing any assisted living or custodial care or services to such patients, all to ensure the patient's safety, health and well-being and to protect such patients from any foreseeable or otherwise avoidable risk of injury or harm.

41. The Plaintiff further avers that the Defendant, Family Touch, through its real, apparent and/or ostensible agents, servants and/or employees, breached applicable standards of care and otherwise was negligent in the provision of professional, assisted living and custodial services to the Plaintiff, Eleanor Williams. Such breaches of the applicable standards of care and negligent acts and omissions include, but are not necessarily limited to, the following:

- a. Failing to exercise reasonable care to develop, institute, and/or follow a reasonable plan of care for the Plaintiff, Eleanor Williams, to ensure the Plaintiff's health, safety and well-being and otherwise to protect the Plaintiff from any foreseeable or otherwise avoidable risk of injury or harm;
- b. Failing to develop, institute and/or follow a reasonable plan of care for the Plaintiff, Eleanor Williams, for fall protection so as to ensure the Plaintiff's health, safety and well-being and otherwise to protect the Plaintiff from any foreseeable or otherwise avoidable risk of injury or harm;
- c. Failing to exercise reasonable care in the timely and careful diagnosis, assessment and investigation of any incidents on the premises of Family Touch involving any harm or injury to the Plaintiff, Eleanor Williams, while on the premises of Family Touch;
- d. Failure to deliver the necessary care and services to the Plaintiff, Eleanor Williams, to maintain the highest practicable physical, mental and psychosocial well-being as mandated by OBRA regulation, Quality of Care §483.23(a)(1);
- e. Failing to provide the Plaintiff, Eleanor Williams, with a safe and comfortable environment on the premises of Family Touch, or to ensure her safety, health and well-being;
- f. Failing to exercise reasonable care in the hiring, training, supervision and oversight of its agents, servants and/or employees, including the Defendant, Montia Farmer, responsible for the provision of assisted living and custodial care and services to the Plaintiff, Eleanor Williams;

g. Negligently making professional assignments to their agents, servants and/or employees, including the Defendant, Montia Farmer, to provide custodial and/or assisted living care and services to the Plaintiff, Eleanor Williams, for which such employees had inadequate and/or inappropriate training, education, experience and expertise;

h. Failing to treat the Plaintiff, Eleanor Williams, with consideration and respect, in full recognition of the Plaintiffs human dignity and individuality;

i. Failing to take the reasonable precautions that were necessary to prevent the physical abuse of the Plaintiff, Eleanor Williams;

j. Failing to provide to the Plaintiff, Eleanor Williams, treatment, care and services that were adequate, appropriate and in compliance with relevant state, local and federal laws and regulations;

k. Subjecting the Plaintiff, Eleanor Williams, to inappropriate and improper force and restraint

l. Subjecting the Plaintiff, Eleanor Williams, by and through their duly authorized agents, servants and/or employees, including the Defendant, Montia Farmer, to inappropriate and improper use of force and restraint while providing professional, assisted living and/or custodial care and services to the Plaintiff;

m. Failing to hire, staff and train a sufficient number of qualified Health Care Providers to adequately supervise, oversee the provision of assisted living and custodial care and services to the Plaintiff, Eleanor Williams;

n. Failing to detect, investigate, prevent and intervene in response to any injurious events suffered by the Plaintiff, Eleanor Williams, while on the premises of Family Touch; and

o. Being otherwise careless, negligent and failing to exercise reasonable care under the circumstances.

42. The Plaintiff further avers that all injuries damages and losses complained of were due to the negligence and careless acts and omissions of the Defendant, Family Touch, through its real, apparent and/or ostensible agents, servants and/or employees, who breached their fore-mentioned duties to the Plaintiff, Eleanor Williams.

43. The Plaintiff further avers that, as a direct and proximate cause of the inadequate, inappropriate, substandard and negligent acts and omissions of the Defendant, Family Touch, through its real, apparent, and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams was injured and damaged.

44. The Plaintiff further avers that, as a direct and proximate cause of the negligent acts and omissions of the Defendant, Family Touch, through its real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams, was caused to suffer physical and emotional pain and suffering, mental anguish, improper restraint, embarrassment, violations of basic human dignity, degradation and was otherwise injured and damaged.

45. The Plaintiff further avers that, as a direct and proximate cause of the negligent acts and omissions of the Defendant, Family Touch, through its real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams, suffered a severe shock to her nerves and nervous system, physical pain, mental anguish, and was otherwise injured and damaged, thereby necessitating the decision of her Niece and Power of Attorney, Sandra Smith, to remove the Plaintiff from the premises of Family Touch to protect the Plaintiff from further injury and harm and to ensure the Plaintiff's continued safety.

46. The Plaintiff further avers that, as a direct and proximate cause of the negligent acts and omissions of the Defendant, Family Touch, through its real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams, individually and by and through her Niece and Power of Attorney, Sandra Smith, has been forced to incur and, in the future,

will continue to incur, expenses for the medical, nursing, custodial and rehabilitation care and treatment of the Plaintiff, Eleanor Williams.

47. The Plaintiff, Eleanor Williams, further avers that all of her injuries, damages and losses were caused by the negligent acts and omissions of the Defendant, through its real, apparent, and/or ostensible agents servants and/or employees, without any negligence or want of due care on the part of the Plaintiff thereunto contributing.

WHEREFORE, this claim is brought by the Plaintiff, Eleanor Williams, through her Niece and Power of Attorney, Sandra Smith, against the Defendant, Family Touch, for compensatory damages, together with interest and the cost of this litigation.

COUNT II

(Negligence - Montia Farmer)

48. The Plaintiff, Eleanor Williams, individually and through her Niece and Power of Attorney, Sandra Smith, repeats, re-alleges, adopts and incorporates by reference paragraphs 1 through 47 of this Complaint though fully set forth herein.

49. At all times complained of, the Defendant, Montia Farmer, individually and/or as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, represented to the public, to the Plaintiff, Eleanor Williams, and to her Niece and Power of Attorney, Sandra Smith, possession of that degree of skill, knowledge, training and ability ordinarily possessed by reasonably competent practitioners providing assisted living and/or custodial care and professional services to **elderly** patients suffering from disabilities associated with Alzheimer's Disease, dementia and/or memory loss admitted to facilities such as Family Touch.

50. At all relevant times of which the Plaintiff complains, the Defendant, Montia Farmer, was acting as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, within the scope of her agency, apparent agency, contract and/or employment.

51. At all times complained of, the Defendant, Montia Farmer, individually and/or as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, owed to the Plaintiff, Eleanor Williams, the duty to exercise that degree of care, skill and judgment ordinarily expected of a reasonably competent assisted living or custodial aide providing professional care and services to **elderly** patients suffering from disabilities associated with Alzheimer's Disease, dementia and/or memory loss admitted to a assisted living and/or long-term care facility in the State of Maryland such as Family Touch. That duty included the use of reasonable and prudent care and judgment while having any personal or professional interactions with such patients and/or while providing any assisted living or custodial care or services to such **elderly** patients, to ensure the patient's safety, health and well-being, and to protect such **elderly** patients from any foreseeable or otherwise avoidable risk of harm or injury.

52. The Plaintiff further avers that, the Defendant, Montia Farmer, individually and/or as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, breached applicable standards of care and otherwise was negligent in her professional interactions with, and it the provision of assisted living and custodial services to, the Plaintiff, Eleanor Williams. Such breaches of the applicable standards of care and acts of negligence include, but are not reasonably limited to, the following:

a. Failing to exercise reasonable care in her professional interactions with, or the provision of assisted living and custodial services to, the Plaintiff, Eleanor Williams, to ensure the Plaintiffs safety, health and well-being;

b. Failing to exercise reasonable care while having any personal or professional interactions with, or providing assisted living or custodial care or services to, the Plaintiff, to avoid any injury or harm to the Plaintiff;

- c. Negligently accepting professional assignments to provide assisted living and/or custodial care or services to the Plaintiff, for which she had inadequate and/or inappropriate training, education and/or experience;
- d. Negligently failing to develop, institute and/or follow a reasonable plan of care for the Plaintiff, Eleanor Williams, attendant to the provision of any assisted living or custodial services to the Plaintiff, to ensure the Plaintiffs health, safety and well-being and to otherwise protect the Plaintiff from any foreseeable or otherwise avoidable injury or harm;
- e. Negligently failing to request and obtain the timely assistance and intervention of reasonably trained, competent health care providers to assist with, oversee, and/or direct the provision of any professional, assisted living or custodial care or services provided to the Plaintiff, Eleanor Williams, to ensure the Plaintiffs health, safety and well-being and to otherwise protect the Plaintiff from any foreseeable or otherwise avoidable, injury or harm;
- f. Negligently failing to comply with, and otherwise to comport her personal and professional conduct to, applicable state and federal laws and regulations related to the provision of any professional, assisted living or custodial care or services to patients such as the Plaintiff, Eleanor Williams;
- g. Negligently failing to comply with, and otherwise to comport her personal and professional conduct to, any applicable policies, procedures and protocols of the Defendant, Family Touch, related to the provision of any professional, assisted living or custodial care or services to any patients admitted to Family Touch, including the Plaintiff, Eleanor Williams;
- h. Negligently utilizing improper and excessive force and restraint attendant to the provision of professional, assisted living and/or custodial services to the Plaintiff within the scope of her employment;
- i. Negligently utilizing inappropriate and improper means, techniques and methods while providing professional, assisted living and/or custodial services to the Plaintiff within the scope of her employment; and
- j. Being otherwise careless, negligent and failing to exercise reasonable care under the circumstances.

53. The Plaintiff further avers that the injuries, damages and losses complained of were due to the negligent and careless acts and omissions of the Defendant, Montia Farmer, individually and/or as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, who breached her aforementioned duties to the Plaintiff, Eleanor Williams.

54. The Plaintiff further avers that as a direct and proximate cause of the inadequate, inappropriate, substandard and negligent and careless acts and omissions of the Defendant, Montia Farmer, individually and/or as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, the Plaintiff, Eleanor Williams, was injured and damaged.

55. The Plaintiff further avers that, as a direct and proximate cause of negligent acts and omissions of the Defendant, Montia Farmer, individually and/or as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, the Plaintiff, Eleanor Williams, was caused to suffer physical and emotional pain and suffering, mental anguish, improper restraint, embarrassment, violations of basis human dignity, degradation and was otherwise injured and damaged, without any negligence on the part of the Plaintiff contributing thereto.

56. The Plaintiff, Eleanor Williams, further avers that, as a direct and proximate cause of the negligent and careless acts and omissions of the Defendant, Montia Farmer, individually and/or as a real, apparent and/or ostensible agent, servant, and/or employee of the Defendant, Family Touch, the Plaintiff, Eleanor Williams, suffered a severe shock to her nerves and nervous system, physical pain, mental anguish and was otherwise injured and damaged, thereby necessitating the decision of her Niece and Power of Attorney, Sandra Smith, to remove the Plaintiff from premises of Family Touch to protect the Plaintiff from further injury and harm and to ensure the Plaintiffs continued safety.

57. The Plaintiff, Eleanor Williams, further avers that, as a direct and proximate cause of the negligent and careless acts and omissions of the Defendant, Montia Farmer, individually and/or as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, the Plaintiff, individually and by and through her Niece and Power of Attorney, Sandra Smith, has been forced to incur and, in the future, will continue to incur, expenses for the medical, nursing, custodial and rehabilitation care and treatment of the Plaintiff, Eleanor Williams.

58. The Plaintiff, Eleanor Williams, further avers that, all of her injuries, damages and losses were caused by the negligent acts and omissions of the Defendant, Montia Farmer, individually and/or as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, without any negligence or want of due care on the part of the Plaintiff thereunto contributing.

WHEREFORE, this claim is brought by the Plaintiff, Eleanor Williams, through her Niece and Power of Attorney, Sandra Smith, against the Defendant, Montia Farmer, for compensatory damages, together with interest and the costs of this litigation.

COUNT III

(Intentional Torts – Assault and Battery)

59. The Plaintiff, Eleanor Williams, individually and through her Niece and Power of Attorney, Sandra Smith, repeats, re-alleges, adopts and incorporates by reference paragraphs 1 through 58 of this Complaint as though fully set forth herein.

60. The Plaintiff further avers that, on the morning of August 8, 2013, the Defendant, Montia Farmer, entered the room of the Plaintiff, Eleanor Williams, at Family Touch.

61. The Plaintiff further avers that, with the intent and capability to do bodily harm to the Plaintiff, Eleanor Williams, the Defendant, Montia Farmer, intentionally, maliciously, unlawfully, and willfully, and without legal justification or excuse, acted to cause the Plaintiff to be put in reasonable fear and apprehension of an imminent battery. Such actions of the Defendant, Montia Farmer, included, but were not limited to, reaching toward the Plaintiff to hit, strike and/or restrain her; moving toward the Plaintiff to hit and/or strike Ms. Williams' head and eye; moving toward the Plaintiff to place her forearm and body in a position to forcibly compress the Plaintiff's upper arms; and other actions calculated intentionally, wilfully and maliciously to place the Plaintiff in fear and apprehension of being hit, abused, battered, struck, and physically restrained against her will, while the Plaintiff was unable to defend herself or to call for help or assistance.

62. The Plaintiff further avers that, with malicious and willful intent to do bodily harm to the Plaintiff, Eleanor Williams, the Defendant, Montia Farmer, intentionally, maliciously, unlawfully, and willfully, and without legal justification or excuse, grabbed the Plaintiff's arms; struck and hit the Plaintiff's head and eye; and otherwise with malice and ill will towards the Plaintiff, while the Plaintiff was unable to defend herself or to call for help or assistance.

63. The Plaintiff further avers that, at all relevant times of which the Plaintiff complains, the Defendant, Montia Farmer, was acting as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, within the scope of her agency, apparent agency, contract and/or employment.

64. The Plaintiff further avers that, in an Incident Report authorized by Investigating Officer Schoneman of the Baltimore County Police Department, who noted:

This officer spoke with Dr. Uma, who advised that the injury to Eleanor's right eye was caused by someone striking her in the face. Dr. Uma also stated that upon further examination, "finger" sized bruises were observed on both of Eleanor's inner biceps. This officer observed the same aforementioned bruising on Eleanor's body.

Ms. Thompson advised that she became suspicious when she was called back today because of bruises that were observed on Eleanor's inner biceps. Ms. Thompson stated that she investigated the incident further and determined that Montia Farmer (caregiver) was responsible for the aforementioned bruises.

65. The Plaintiff further avers that, the Defendant, Family Touch, as the master, principal and employer of the Defendant, Montia Farmer, are vicariously liable for the malicious assault and battery of the Plaintiff, Eleanor Williams, committed by the Defendant, Montia Farmer, within the scope of her agency, apparent agency, contract and/or employment.

66. The Plaintiff further avers that, as a direct and proximate result of the malicious abuse, assault and battery committed by the Defendant, Montia Farmer, individually and/or as a real, apparent and/or ostensible agent, servant, and/or employee of the Defendant, Family Touch, within the scope of her agency, apparent agency, contract and/or employment, the Plaintiff, Eleanor Williams, suffered physical and emotional pain and suffering, mental anguish, improper restraint, embarrassment, the violation of her basic human dignity, degradation and was otherwise injured and damaged.

67. The Plaintiff further avers that, as a direct and proximate result of the malicious abuse, assault and battery committed by the Defendant, Montia Farmer, individually and/or as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, within the scope of her agency, apparent agency, contract and/or employment, the Plaintiff, Eleanor Williams, suffered a severe shock to her nerves and nervous system, physical pain, mental anguish and was otherwise injured and damaged, thereby necessitating the decision of her Niece and Power of Attorney, Sandra Smith, to remove the Plaintiff from the premises of Family Touch so as to protect the Plaintiff from further injury and harm and to ensure the Plaintiff's continued safety.

68. The Plaintiff further avers that, as a direct and proximate result of the malicious abuse, assault and battery committed by the Defendant, Montia Farmer, individually and/or as a real, apparent and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, within the scope of her agency, apparent agency, contract and/or employment, the Plaintiff, Eleanor Williams, individually and through her Niece and Power of Attorney, Sandra Smith, has been forced to incur and, in the future, will continue to incur, expenses for the medical, nursing, custodial and rehabilitation care and treatment of the Plaintiff, Eleanor Williams.

69. The Plaintiff, Eleanor Williams, further avers that all of her injuries, damages and losses were caused by the malicious abuse, assault and battery committed by the Defendant, Montia Farmer, individually and/or as a real, apparent, and/or ostensible agent, servant and/or employee of the Defendant, Family Touch, within the scope of her agency, apparent agency, contract and/or employment, without any negligence or want of due care on the part of the Plaintiff thereunto contributing.

WHEREFORE, this claim is brought by the Plaintiff, Eleanor Williams, through her Niece and Power of Attorney, Sandra Smith, against the Defendant, Family Touch, for compensatory and punitive damages, together with interest and the costs of this litigation.

COUNT V

(Negligent Hiring, Retention and Supervision)

70. The Plaintiff, Eleanor Williams, individually and by and through her Niece and Power of Attorney, Sandra Smith, repeats, re-alleges, adopts and incorporates by reference paragraphs 1 through 69 of this Complaint as though fully set forth herein.

71. The Plaintiff further avers that, the staff employed by the Defendant, Family Touch, provided medical, assisted living and custodial care to **elderly** patients suffering from disabilities associated with Alzheimer's disease, dementia, and/or memory loss such as the Plaintiff, Eleanor Williams. Such professional services were rendered to patients at Family Touch in areas separate

and apart from those accessible to the public and to patients unable to care for themselves and with minimal, if any, capacity to protect their persons and property. These facts, and those previously set forth, placed the Defendant, Family Touch, on notice of the necessity to make reasonable and thorough inquiries into the personal and professional education, background and training of its employees and otherwise created a duty to exercise the highest degree of care in the selection, employment, oversight and supervision of its employees, so as to create a fiduciary relationship between Defendant, Family Touch, and its patients, including the Plaintiff, Eleanor Williams.

72. The Plaintiff further avers that, Defendant, Family Touch, committed the following negligent acts and omissions in their administration of Family Touch, all of which, in whole or in part, proximately caused the injuries, damages and losses complained of by the Plaintiff, Eleanor Williams, including the following negligent acts and omissions:

- a. Failing to follow reasonable policies and procedures in the selection of its employees, including the Defendant, Montia Farmer;
- b. Failing to ensure that all references of prospective employees, including, but not limited to, those of the Defendant, Montia Farmer, were reasonably confirmed that all personal and professional histories are fully investigated;
- c. Failing to make a reasonable inquiry into the personal, professional and/or criminal histories of its prospective employees, including, but not limited to, the Defendant, Montia Farmer;
- d. Failing to provide adequate and adequate number and an adequately trained professional staff to supervise, direct and oversee the health care and custodial services provided by its employees including, but not limited to, the Defendant, Montia Farmer;
- e. Failing to adequately and reasonably supervise its employees including, but not limited to, the Defendant, Montia Farmer;
- f. Failing to administer and manage Family Touch in a reasonably prudent fashion;
- g. Failing to reasonably budget and otherwise to provide sufficient financial resources to adequately train, guide, oversee and supervise its employees, including, but not limited to, the Defendant, Montia Farmer, to properly care for patients admitted to Family Touch including, but not limited to, the Plaintiff, Eleanor Williams;
- h. Failing to provide reasonable and safe working conditions, education, training and professional support for its employees, including, but not limited to, the Defendant, Montia Farmer; and
- i. Being otherwise negligent and careless.

73. The Plaintiff further avers that all injuries, damages and losses complained of were due to the negligence and careless acts and omissions of the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, who breached their fore-mentioned duties to the Plaintiff, Eleanor Williams.

74. The Plaintiff further avers that, as a direct and proximate cause of the inadequate, inappropriate, substandard and negligent acts and omissions of the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams was injured and damaged.

75. The Plaintiff further avers that, as a direct and proximate cause of the negligent acts and omissions of the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants, and/or employees, the Plaintiff, Eleanor Williams, was caused to suffer physical and emotional pain and suffering, mental anguish, improper restraint, embarrassment, violations of basic human dignity, degradation and was otherwise injured and damaged.

76. The Plaintiff further avers that, as a direct and proximate cause of the negligent acts and omissions of the Defendant, Family Touch, through their real, apparent, and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams, suffered a severe shock to her nerves and nervous system, physical pain, mental anguish and was otherwise injured and damaged, thereby necessitating the decision of her Niece and Power of Attorney, Sandra Smith, to remove the Plaintiff from the premises of Family Touch to protect the Plaintiff from further injury and harm and to ensure the Plaintiff's continued safety.

77. The Plaintiff further avers that, as a direct and proximate cause of the negligent acts and omissions of the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams, individually and by and through her Niece and Power of Attorney, Sandra Smith, has been forced to incur and, in the future, will continue to incur, expenses for the medical, nursing, custodial and rehabilitation care and treatment of the Plaintiff, Eleanor Williams.

78. The Plaintiff, Eleanor Williams, further avers that all of her injuries, damages and losses were caused by the negligent acts and omissions of the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, without any negligence or want of due care on the part of the Plaintiff thereunto contributing.

WHEREFORE, this claim is brought by the Plaintiff, Eleanor Williams, through her Niece and Power of Attorney, Sandra Smith, against the Defendant, Family Touch, for compensatory damages, together with interest and the costs of this litigation.

COUNT VI

(Negligence Per Se)

79. The Plaintiff, Eleanor Williams, individually and by and through her Niece and Power of attorney, Sandra Smith, repeats, re-alleges, adopts and incorporates by reference paragraphs 1 through 78 of this Complaint as though fully set forth herein.

80. The Plaintiff further avers that, the conduct of the Defendant, Family Touch, is governed by Md. Crim. Law Code Ann. § 3-605(b)(1), which provides that “A caregiver ... or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or **neglect** of the vulnerable adult.”

81. The Plaintiff, Eleanor Williams, further avers that, at all times complained of, she was a “vulnerable adult” who lacked the physical and/or mental capacity to provide for her daily needs, and who was receiving professional services for her **elderly** care and disabilities associated with Alzheimer's Disease, dementia and/or memory loss at Family Touch and, as such, she was an intended beneficiary of the statute identified in this cause of action.

82. The Plaintiff, Eleanor Williams, further avers that, the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, violated Md. Crim. Law Code Ann. § 3-605(b)(1).

83. The Plaintiff, Eleanor Williams, further avers that, the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, failed to comply with Federal and State Regulations including, but not limited to, the Resident Rights, Resident Assessment, Quality of Life, Quality of Care, and Maryland State requirements, regulations and laws mandating that vulnerable adult residents of facilities such as Family Touch be free from verbal, physical and/or mental abuse.

84. The Plaintiff, Eleanor Williams, further avers that, the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and or/employees, failed to comply with Federal and state Regulations including, but not limited to, the Resident Rights, Resident Assessment, Quality of Life, Quality of Care, and Maryland State requirements, regulations and laws mandating that vulnerable adult residents of facilities such as Family Touch be free from verbal, physical and/or mental abuse.

85. The Plaintiff, further avers that, these statutes, laws, regulations and requirements were enacted for the benefit and protection of a class of the public in which the Plaintiff, Eleanor Williams, was a member at all times complained of in this action and, accordingly, these statutes, laws, regulations and requirements establish the minimum standard of care expected of any facility in the State of Maryland providing health care or custodial services to a vulnerable adult such as the Plaintiff, Eleanor Williams.

86. The Plaintiff further avers that all injuries, damages and losses complained of were due to the violation of these statutes, laws, regulations and requirements by the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, which constitutes negligence *per se*.

87. The Plaintiff further avers that, as a direct and proximate cause of the violation of these statutes, laws, regulation and requirements by the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams was injured and damaged.

88. The Plaintiff further avers that, as a direct and proximate cause of the violation of these statutes, laws, regulations and requirements by the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams, was caused to suffer physical and emotional pain and suffering, mental anguish, improper restraint, embarrassment, violations of basic human dignity, degradation and was otherwise injured and damaged.

89. The Plaintiff further avers that, as a direct and proximate cause of the violation of these statutes, laws, regulations and requirements by the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams, suffered a severe shock to her nerves and nervous system, physical pain, mental anguish and was otherwise injured and damaged, thereby necessitating the decision of her Niece and Power of Attorney, Sandra Smith, to remove the Plaintiff, Sandra Smith, to remove the Plaintiff from the premises of Family Touch so as to protect the Plaintiff from further injury and harm and to ensure the Plaintiff's continued safety.

90. The Plaintiff further avers that, as a direct and proximate cause of the violation of these statutes, laws, regulations and requirements by the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams, individually and by and through her Niece and Power of Attorney, Sandra Smith, has been forced to incur and, in the future, will continue to incur, expenses for the medical, nursing, custodial and rehabilitation care and treatment of the Plaintiff, Eleanor Williams.

91. The Plaintiff, Eleanor Williams, further avers that all of her injuries, damages and losses were caused by the violation of these statutes, laws, regulations and requirements by the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, without any negligence or want of due care on the part of the Plaintiff thereunto contributing.

WHEREFORE, this claim is brought by the Plaintiff, Eleanor Williams, through her Niece and Power of Attorney, Sandra Smith, against the Defendant, Family Touch, for compensatory damages, together with interest and the costs of this litigation.

COUNT VI

(Negligent and/or Fraudulent Misrepresentation and Omissions)

92. The Plaintiff, Eleanor Williams, individually and by and through her Niece and Power of Attorney, Sandra Smith, repeats, re-alleges, adopts and incorporates by reference paragraphs 1 through 91 of this Complaint as though fully set forth herein.

93. The Plaintiff, Eleanor Williams, further avers that, at all relevant times, the Defendant, Family Touch, acting through their real, apparent and/or ostensible agents, servants and/or employees, who were acting within the scope of their agency, apparent

agency, contract and/or employment, made false and misleading material statements and omissions regarding the care, treatment and services that they provided, and were able to provide to the Plaintiff, Eleanor Williams, at the facility Family Touch.

94. The Plaintiff, Eleanor Williams, further avers that Defendant, Family Touch, acting through their real, apparent and/or ostensible agents, servants and/or employees, who were acting within the scope of their agency, apparent agency, contract and/or employment, knowingly made material misrepresentations and omissions regarding the safety and security of patients admitted to Family Touch; of the quality of care provided at Family Touch; and the ability of the Family Touch, through its real, apparent and/or ostensible agents, servants and/or employees, to adequately, reasonably and safely care for patients such as the Plaintiff, Eleanor Williams.

95. The Plaintiff, Eleanor Williams, further avers that, the Defendant, Family Touch, breached their duty of good faith and fair dealing and, to the contrary, engaged in deceit, misrepresentation, and fraud, by not revealing the extent to which their facility, Family Touch, was understaffed; and/or was staffed with inadequately vetted, trained, educated, overseen and/or directed staff; and/or the extent to which other residents and patients of their facility, Family Touch, had been abused and/or **neglected** by their employees.

96. The Plaintiff, Eleanor Williams, further avers that, these material misrepresentations and omissions by the Defendant, Family Touch, were made with actual knowledge of their falsity and/or with reckless indifference to the truth.

97. The Plaintiff, Eleanor Williams, further avers that, all misrepresentations and fraudulent statements and/or omissions made by the Defendant, Family Touch, were made with the specific and actual intent that the Plaintiff, Eleanor Williams, and her Niece and Power of Attorney, Sandra Smith, would act in reliance upon such material statements, misrepresentations and omissions. The Defendant, Family Touch, acting through their real, apparent and/or ostensible agents, servants and/or employees, who were acting within the scope of their agency, apparent agency, contract and/or employment, made these false and misleading material statements and/or omissions with the intent to deceive the Plaintiff, Eleanor Williams, and her Niece and Power of Attorney, Sandra Smith, regarding the character and quality of care, treatment and services available to the Plaintiff, Eleanor Williams, at their facility, Family Touch, with the intent of inducing members of the public, including the Plaintiff, Eleanor Williams, and to her Niece and Power of Attorney, Sandra Smith, to purchase their professional services.

98. The Plaintiff further avers that, The Plaintiff, Eleanor Williams, and/or her representatives, including her Niece and Power of Attorney, Sandra Smith, did justifiably rely upon the false and misleading material statements and/or omissions of the Defendant, Family Touch, when choosing to admit the Plaintiff, Eleanor Williams, to Family Touch.

99. The Plaintiff further avers that all injuries, damages and losses complained of were due to the negligence and/or willful, wanton and/or reckless conduct of the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, which constitutes negligence *per se*.

100. The Plaintiff further avers that, as a direct and proximate cause of the negligence and/or willful, wanton and/or reckless conduct of the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams, was injured and damaged.

101. The Plaintiff further avers that, as a direct and proximate cause of the negligence and/or willful, wanton and/or reckless conduct of the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams, was caused to suffer physical and emotional pain and suffering, mental anguish, improper restraint, embarrassment, violations of basic human dignity, degradation and was otherwise injured and damaged.

102. The Plaintiff further avers that, as a direct and proximate cause of the negligence and/or willful, wanton and/or reckless conduct of the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams, suffered a severe shock to her nerves and nervous system, physical pain, mental anguish and

was otherwise injured and damaged, thereby necessitating the decision of her Niece and Power of Attorney, Sandra Smith, to remove the Plaintiff from the premises of Family Touch to protect the Plaintiff from further injury and harm and to ensure the Plaintiff's continued safety.

103. The Plaintiff further avers that, as a direct and proximate cause of the negligence and/or willful, wanton and/or reckless conduct of the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, the Plaintiff, Eleanor Williams, individually and by and through her Niece and Power of Attorney, Sandra Smith, has been forced to incur and, in the future, will continue to incur, expenses for the medical, nursing, custodial and rehabilitation care and treatment of the Plaintiff, Eleanor Williams.

104. The Plaintiff, Eleanor Williams, further avers that all of her injuries, damages and losses were caused by the negligence and and/or willful, wanton and/or reckless conduct of the Defendant, Family Touch, through their real, apparent and/or ostensible agents, servants and/or employees, without any negligence or want of due care on the part of the Plaintiff thereunto contributing.

WHEREFORE, this claim is brought by the Plaintiff, Eleanor Williams, through her Niece and Power of Attorney, Sandra Smith, against the Defendant, Family Touch, for compensatory and punitive damages, together with interest and the costs of this litigation.

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